Supreme Court, U.S.
FILED
JAN 14 1999
CLERK

No. 98-825

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**IN THE**
**SUPREME COURT OF THE UNITED STATES**

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OCTOBER TERM, 1998

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**AMIEL CUETO,**
Petitioner,
**v.**
**UNITED STATES OF AMERICA,**
Respondent.

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On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

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# BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

DOES PERMITTING THE GOVERNMENT TO PROSECUTE COUNSEL FOR LITIGATION-RELATED MISCONDUCT UNDER THE BROAD, CATCHALL PROVISIONS OF 18 U.S.C. §§ 371 AND 1503 VIOLATE A CLIENT'S SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL?

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**BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

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THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (NACDL) files this amicus brief pursuant to this Court's Rule 37.2(a) in support of Amiel Cueto's petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit. Both petitioner and respondent have granted amicus NACDL consent to file this brief, and letters of consent have been filed with the Clerk of this Court.[1]

## INTEREST OF AMICUS

NACDL is a nonprofit corporation with over 10,000 attorneys and 28,000 affiliated members in all fifty states. The NACDL was founded in 1958 to advance the study of the theory and practice of criminal law, to publish on the subject of criminal practice, and to promote the integrity, independence and skill of the criminal defense bar. One objective of NACDL is to ensure that defense attorneys have the ability to provide zealous representation to their clients, as required by the Sixth Amendment to the United States Constitution. In particular, one of the concerns of NACDL is to ensure that defense

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[1]No counsel for any party to this case authored this brief in whole or in part, and no person or entity, other than NACDL and its members, made any monetary contribution to its preparation or submission.

counsel have the ability to aggressively and effectively represent their clients, without the threat of criminal prosecution under broadly drafted criminal charges. Otherwise, the government may use its prosecutorial discretion to chill zealous representation.

## SUMMARY OF ARGUMENT

Our adversarial system of criminal justice requires the zeal and independence of both the prosecutor and defense counsel, as each has a specific function in the law's search for the truth. In performing their respective roles, counsel must have some flexibility, because "attaining the system's goal of accurately determining the guilt or innocence requires that both the prosecution and the defense have wide discretion in the conduct of the trial and presentation of evidence." *Imbler v. Pachtman*, 424 U.S. 409, 426 (1976). In part, the Sixth Amendment ensures the structural integrity of the criminal process by barring any "restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary process. . ." *Herring v. New York*, 422 U.S. 853, 857 (1975). These functions — what may loosely be described as "litigation-related conduct" — include not only all forms of courtroom advocacy, but cover the whole continuum of representation, from the early stages of a criminal investigation to the final phases of appellate litigation. *Cf. Buckley v. Fitzsimmons*, 509 U.S. 259, 272-74 (1993)(doctrine of absolute prosecutorial immunity extends to all phases of a prosecutor's role as an advocate of the state).

Yet, the right to counsel, as broad and important as it is, does not permit an attorney to commit unethical or unlawful acts in the defense of a client. When counsel crosses the line, there must be enforceable mechanisms of punishment. Indeed,

such mechanisms exist, ranging from attorney discipline and civil and criminal contempt, to criminal prosecution for perjury, tampering with witnesses and suborning perjury, and violations of the specific obstruction of justice provision of 18 U.S.C. § 1503. These are the specific and traditional vehicles to check an advocate's improper interference with the government's and the court's ability to perform their appointed functions.

Beyond this range, however, lie more general criminal statutes which arguably reach the same conduct, but are rarely invoked to punish and deter litigation-related misconduct. *Cf. Hubbard v. United States*, 514 U.S. 695, 714 (1995)("we doubt that prosecutors have relied on [18 U.S.C.] § 1001 as an important means of deterring and punishing litigation-related misconduct"). This fact, the very infrequency of their use, suggests the problem. By employing broader and stiffer[2] criminal statutes to prosecute defense attorneys for alleged litigation-related misconduct, the government improperly chills zealous advocacy. It is, in essence, a form of overcharging, i.e, bringing broader and more serious charges than necessary to obtain a fair disposition of the case. *See Bordenkircher v. Hayes*, 434 U.S. 357, 368 n.2 (1978)(Blackmun, J., dissenting). The effect of this new practice of overcharging is significant; it creates unacceptable risks for good faith, zealous advocacy, and injects larger unprecedented institutional pressures into the criminal justice system.

To maintain a healthy balance of vigorous advocacy in the adversarial system, charges against defense attorneys

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[2]The omnibus clause of section 1503 carries a 10-year statutory maximum, 18 U.S.C. § 1503(a)(3); whereas the other listed statutes impose a 5-year statutory maximum. *See infra* at 10.

should be limited to the specific and traditional statutory mechanisms to punish litigation-related misconduct. As a prophylactic rule, prosecutions relying upon broader, less traditional charges should be considered presumptively vindictive under the Sixth Amendment right to counsel and the Due Process Clause.[3]

## REASONS FOR GRANTING WRIT

## THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE TO THE CRIMINAL DEFENSE BAR, AND THE SEVENTH CIRCUIT'S OPINION IS DANGEROUS AUTHORITY IMPAIRING THE RIGHT TO ZEALOUS REPRESENTATION OF COUNSEL.

### A. PROCEDURAL HISTORY

Petitioner Amiel Cueto was charged in a 35-page indictment, with conspiracy to defraud the United States under 18 U.S.C. § 371, with conspiracy to obstruct justice under the omnibus clause of 18 U.S.C. §§ 371 and 1503, and with substantive counts of obstruction-of-justice under the omnibus clause of § 1503.[4] In large part, the United States Attorney's Office prosecuted Mr. Cueto for improper advocacy on behalf of his principal client, Thomas Venezia, and several others.

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[3]Petitioner has standing to raise the Sixth Amendment and Due Process rights of his client, because a criminal defendant's right to zealous advocacy would be adversely affected if the government is permitted to prosecute counsel for alleged litigation-related misconduct under §§ 371 and 1503. *See generally Craig v. Boren*, 429 U.S. 190, 193-97 (1976).

[4]Among other counts, Mr. Cueto was acquitted of conspiracy to obstruct justice under § 1503.

Under the prosecution's theory of the case, Mr. Cueto filed groundless and false pleadings and briefs before state and federal courts, and before the United States Court of Appeals and this Court. Mr. Cueto was also accused of misrepresenting facts to a trial judge and securing a state court order by false pretenses.

In addition, the government alleged that Mr. Cueto filed appearances on behalf of clients, without their knowledge or consent, and represented several clients under a clear conflict of interest. The indictment also charged Mr. Cueto with improperly advising his clients not to cooperate with a federal grand jury and with giving unlawful advice to his clients. *Indictment,* ¶¶ 21, 24-25, 26(e), 26(f), 29-32, 36-39, 46-49, 57, 58. During summation, the prosecution told the jury that Mr. Cueto abused his position as an attorney to foil the investigation and prosecution of Mr. Venezia. RT 31-113. This litigation-related misconduct, the prosecution successfully argued, came within the sweep of 18 U.S.C. § 371, and the omnibus clause of 18 U.S.C. § 1503. Mr. Cueto was ultimately convicted of count 1 [conspiracy to defraud the United States], and counts 2, 6 and 7 [obstruction-of-justice charges] of the indictment.

B. CRIMINAL PROSECUTIONS UNDER THE CATCHALL PROVISIONS OF § 371 AND THE OMNIBUS CLAUSE OF § 1503 WILL CREATE SERIOUS AND UNACCEPTABLE RISKS FOR DEFENSE ADVOCACY.

Without question, §§ 371 and 1503 are two of the broadest statutes in the criminal code. Section 371, [5] for example, "is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government." Likewise, the omnibus or residual clause of § 1503[6] is remarkable for its breadth; it applies to any improper endeavor which is likely to (but does not necessarily), interfere with a judicial proceeding. *United States v. Aguilar*, 515 U.S. 593, 601-02 (1995); *see* App. 17 (omnibus clause is interpreted broadly). What is more, the government here widened the dimensions of the obstruction-of-justice prosecution by charging it as a conspiracy.[7] *See Grunewald v. United States,* 353 U.S. 391, 404 (1957)("We will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of

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[5]Section 371 reads, in relevant part: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this Title or imprisoned not more than five years, or both."

[6]The omnibus clause of § 1503 states: "Whoever. . . corruptly or by threats of force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b)."

[7]*Indictment*, ¶¶ 76-87.

conspiracy prosecutions.").

Such a sprawling prosecution sends out an ominous message to the defense bar and puts attorneys in a very precarious situation. In the often hurried, unpredictable and emotionally-charged drama of criminal litigation, defense attorneys now walk a razor's edge: they must zealously represent their clients as the Sixth Amendment requires, but must do so with the ever-present worry of their own criminal liability under broadly drafted charges. *Cf. Imbler v. Pachtman*, 424 U.S. at 429 ("Frequently acting under serious constraints of time and even information, a prosecutor inevitably makes many decisions that could engender colorable claims of constitutional deprivation.").

The significance of this brand of prosecution cannot be overstated. Under a conspiracy theory or similarly broad charge, an attorney's innocent or inadvertent act, when viewed in larger context, may appear as part of a criminal enterprise. *Badders v. United States*, 240 U.S. 391, 394 (1916)(a facially innocent act may be found to be one step in a criminal conspiracy). Under the government's virtually unreviewable charging powers, defense attorneys would be subject to ill-defined and open-ended prosecutions for real and apparent misconduct. *See generally* Abraham S. Goldstein, *Conspiracy to Defraud the United States*, 68 Yale L. J. 405, 409-12 (1959)(discusses difficulties in defending § 371 charges).

This is not simply an abstract concern, as demonstrated by the position the United States Attorney's Office took in this case. Here, the government argued during summation that several of petitioner's litigation-related acts (which were indictable under the specific and traditional statutes) were somehow part of an overarching scheme to defraud the

Government under § 371, and to obstruct justice under § 1503:

> Cueto used his law license like he had an Uzi in his pocket.
>
> So if a false court order had to be filed in court of law, it had to be done.
>
> So if a false pleading had to be filed to derail a federal grand jury, it had to be done.
>
> So if a federal judge needed to be gotten rid of through disqualification, it had to be done.
>
> So if a false motion had to be filed to discharge the federal grand jury investigating Tom Venezia, it had to be done.
>
> So if the federal investigation and prosecution of Tom Venezia had to be impeded and obstructed, it had to be done.
>
> So if Amiel Cueto had to violate every ethical rule in the book to accomplish the fraud on the Government, it had to be done.
>
> And the sole justification, ladies and gentlemen, is the Attorney Amiel Cueto, armed with his law license and his political power, is the zealous advocate for Tom Venezia, a racketeer and a criminal.[8]

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[8]RT 31-8, 31-9.

### C. THE SEVENTH CIRCUIT'S UNCONDITIONAL APPROVAL OF OPEN-ENDED PROSECUTIONS AGAINST DEFENSE ATTORNEYS IS UNSOUND AND DANGEROUS.

In its opinion, the lower court agreed with some of amicus's policy concerns and arguments, but nonetheless rejected them in favor of broad prosecutorial discretion:

> We have carefully examined the fears articulated by the National Association of Criminal Defense Lawyers, in addition to the arguments put forth by the defendant, that a decision upholding the application of the omnibus clause of § 1503 to litigation-related conduct may deter or somehow chill the criminal defense lawyers in zealous advocacy, and we find those concerns to be exaggerated, at least as considered in light of the facts in the present case. Although we appreciate that it is of significant importance to avoid chilling vigorous advocacy and to maintain the balance of effective representation, we also recognize that a lawyer's misconduct and criminal acts are not *absolutely immune* from prosecution....

App. 19 (emphasis added).

While correctly identifying certain aspects of amicus's position, the lower court misunderstood the most fundamental part. Specifically, amicus did not then, nor does it now, propose a rule of absolute immunity for prosecutions against attorneys for their litigation-related misconduct. Amicus's

approach assumes an attorney's liability, criminal or otherwise, for misconduct committed in his professional capacity. Such liability, however, would presumptively be limited to the specific and traditional punitive measures.

The list of these acceptable measures includes: the various forms of attorney discipline, *see* ABA Code of Professional Responsibility, various contempt sanctions, Fed. R. Crim. P. 42, 18 U.S.C. § 401, and prosecutions for false claims against the United States, perjury, subornation of perjury, witness tampering, false declaration before jury or court, 18 U.S.C. §§ 287, 1621, 1622, 1623. Even the three specific provisions under the obstruction-of-justice statute, 18 U.S.C. § 1503,[9] serve as specific and effective methods to punish litigation-related misconduct. *See Hubbard*, 514 U.S. at 714 (discusses array of available statutes to penalize false statements).

In reaching its decision, the Seventh Circuit relied heavily upon the First Circuit's holding in *United States v. Cintolo*, 818 F.2d 980 (1st Cir. 1987). *See* App. 17, 19. *Cintolo* is unpersuasive for several reasons. In *Cintolo*, the defendant, a practicing criminal defense attorney, was charged with one count of conspiracy to obstruct justice, 18 U.S.C. §§ 371, 1503, and two substantive counts of the same offense. The gist of the prosecution was that Cintolo purposefully impeded the grand jury investigation of his friend's (Anguilo) illegal gambling and loansharking business. Specifically, the indictment accused Cintolo of abusing his position as an attorney of record for a witness before a grand jury to obtain information for Anguilo

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[9] *See United States v. Aguilar*, 515 U.S at 598 (discusses structure of § 1503, containing three specific provisions and the one omnibus clause).

about the grand jury investigation. Cintolo was further charged with knowingly assisting Anguilo in his efforts to prevent the witness from testifying truthfully or cooperating in any way with the government. Cintolo was convicted of the charges, and the First Circuit affirmed.

The Seventh Circuit's reliance upon *Cintolo* was ill-advised for several reasons. First, in the present case, amicus did not argue for a rule of absolute immunity, as the defendant and its amici did in *Cintolo*. In *Cintolo*, the defendant and amici maintained that absolute immunity should apply to litigation-related conduct, so long as these acts had a facially valid justification. Amicus here, on the other hand, assumed a defense attorney's criminal liability under traditionally invoked statutes for actual litigation-related misconduct (a question of fact for the jury), but challenged the application of the broader catchall provisions of 18 U.S.C. §§ 371 and 1503.

As a result, the First Circuit's exclusive focus in *Cintolo* on the importance of the jury's fact-finding function did not apply here. *Cintolo* emphasized that a blanket immunity for acts committed during defense representation would strip the jury of its paramount role. *Cintolo*, 818 F.2d at 991. Here, no such blanket immunity was sought. Under the rule proposed here, attorneys would still be subject to prosecution under mechanisms traditionally used, with a jury fulfilling its fact-finding function in these criminal prosecutions.

But even if this distinction were not present, this Court should grant certiorari to correct the erroneous and dangerous precedent created by the Seventh Circuit here as well as by the First Circuit in *Cintolo*. To allow the government unbridled discretion to prosecute attorneys under any applicable criminal statute for alleged misconduct committed during core advocacy

creates ominous risks for counsel. As discussed above, the threat of criminal prosecution in its own right carries with it an unacceptable chill on vigorous advocacy. This is true whether or not defense counsel is ultimately convicted. Consequently, in closely-balanced and high profile cases, many defense counsel may decide not to tack too close to the political winds, lest they themselves become the subject of criminal prosecution. *Cf. Imbler*, 424 U.S. at 426 n.24 ("A prosecutor often must decide, especially in cases of wide public interest, whether to proceed to trial where there is a sharp conflict in the evidence. The appropriate course of action in such a case may well be to permit a jury to resolve the conflict. Yet, a prosecutor understandably would be reluctant to go forward with a close case where acquittal likely would trigger a suit against him for damages.").

Apart from increasing counsel's criminal exposure, a prosecutor also immeasurably complicates a trial and greatly burdens the defense by invoking catch-all statutes, such as §§ 371 and 1503. Fundamentally, a prosecutor's ability to admit relevant evidence broadens as do the charges. As a result, what ought to be a narrow evaluation of the evidence offered to prove specific litigation-related acts, now becomes an expanded contextual examination of all seemingly related conduct of both counsel and his defendant/client(s).

Of course, similar problems face all defendants charged under broad statutes. But these concerns are acutely prejudicial to an attorney prosecuted for acts committed in his professional capacity. In a typical prosecution involving two or more defendants (or unindicted co-conspirators), the government must prove the association of the defendants to make its case, an often difficult proof problem. But the association between counsel and his client inheres in the attorney/client relationship

itself. In defending against an open-ended prosecution for acts committed in her professional capacity, an attorney must concede what the Sixth Amendment requires -- a close working relationship with his client. Thus, by indicting both the client and counsel (as was the case here), a prosecutor can, with ease and great effect, exploit the attorney's "guilty" association with his defendant/client to paint a very dark portrait of counsel. Whether through the use of its unlimited charging power or through artful employment of evidence, the government's ability to secure a conviction for specific litigation-related misconduct is greatly enhanced when prosecuted under the catch-all provisions of §§ 371 and 1503.

Under a narrower and more defined prosecution, the government's focus would necessarily be limited to counsel's specific litigation-related conduct. The Seventh Circuit's holding, however, would permit the government to make the attorney/client relationship a principal theme of the criminal prosecution.

Thus, this Court should grant certiorari to decide whether the Seventh Circuit's opinion improperly impacts on the constitutional right to effective assistance of counsel.

D. OPEN-ENDED PROSECUTIONS AGAINST DEFENSE ATTORNEYS FOR THEIR PURPORTED LITIGATION-RELATED MISCONDUCT SHOULD BE CONSIDERED PRESUMPTIVELY VINDICTIVE.

As discussed above, the government has a wide range of specific punitive measures to prosecute defense counsel for litigation-related misconduct. To invoke broader and stiffer measures to punish the same conduct gives rise to an appearance of vindictive prosecution. Thus, open-ended prosecutions should be considered presumptively vindictive.

"In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." *Bordenkircher v. Hayes*, 434 U.S. at 364. Yet, "[t]here is no doubt that the breadth of discretion that our country's legal system vests in prosecuting attorneys carries with it the potential for both individual and institutional abuse. And broad though that discretion may be, there are undoubtedly constitutional limits upon its exercise." *Id.* at 365.

In *North Carolina v. Pearce*, 395 U.S. 711, 723-26 (1969), this Court found a due process violation where a judge, without explanation, imposed an increased sentence on a second conviction, after a defendant had successfully challenged his first conviction. In *Blackledge v. Perry*, 417 U.S. 21, 27 (1974), this Court applied *Pearce* to prohibit a State from using its prosecutorial powers to punish a defendant for successfully attacking a conviction. This Court later reasoned that "[t]o punish a person because he has done what the law plainly allows him to do is a due process violation 'of the most

basic sort . . .'." *United States v. Goodwin*, 457 U.S. at 372. This prophylactic limitation on prosecutorial discretion, familiarly known as vindictive prosecution, requires a complex and difficult inquiry into the state-of-mind of the individual prosecutor and/or his agency. As such, this Court has refined the doctrine by applying a presumption of vindictiveness, where the specific circumstance and posture of the criminal prosecution suggest a "reasonable likelihood of vindictiveness":

> This imposition of punishment is the very purpose of virtually all criminal proceedings. The presence of a punitive motivation, therefore, does not provide an adequate basis for distinguishing governmental action that is fully justified as a legitimate response to perceived criminal conduct from governmental action that is an impermissible response to noncriminal, protected activity. Motives are complex and difficult to prove. As a result, in certain cases in which action detrimental to the defendant has been taken after the exercise of a legal right, the Court has found it necessary to "presume" an improper vindictive motive. Given the severity of such a presumption, however — which may operate in the absence of any proof of an improper motive and thus may block a legitimate response to criminal conduct — the Court has done so only in cases in which a reasonable likelihood of vindictiveness exists.

*Id.* at 372-73.

The question in the present petition is whether the institutional pressures animating the presumption of

prosecutorial vindictiveness in *Blackledge* exist to the same or greater degree in this and other open-ended prosecutions against defense attorneys for their litigation-relation misconduct. *See Scott v. United States*, 419 F.2d 264, 277-79 (D.C. Cir. 1969)(courts should evaluate the overall context of a prosecution and its charges to determine whether prosecutorial discretion has been fairly and justly exercised). For one, a prosecution against a typical defendant stands in sharp contrast to one involving an attorney. The *threat of* or actual filing of an indictment against an attorney for acts committed during the core representation of a criminal defendant implicates the right to counsel in a way that a charge against any other defendant does not. And, it is the *threat*, alone, which imposes a significant although immeasurable chill on the defense bar. *Cf. Hubbard v. United States*, 514 U.S. at 717 (Scalia, J., concurring)(threat of prosecution against attorneys under § 1001 may carry unacceptable risks to the adversarial system).

The Seventh Circuit's brief response to this problem is incomplete. In that court's view, the criminal statutes themselves made the illegality of an attorney's litigation-related conduct self-evident:

> It is undisputed that an attorney may use any *lawful* means to defend his client, and there is no risk of criminal liability if those means employed by the attorney in his endeavors to represent his client remain within the scope of the lawful conduct. However, it is the corrupt endeavor to protect the illegal gambling operation and to safeguard his own financial interest, which motivated Cueto's otherwise legal conduct, that separates his conduct from

that which is legal.

App. 17. But not all litigation-related misconduct, or even more general criminal conduct for that matter, falls so neatly into clearly demarcated areas of criminal and non-criminal behavior. Indeed, the Seventh Circuit correctly acknowledged that there was scant case law on whether litigation-related misconduct came within the reach of the omnibus clause of § 1503.[10]

This aside, many criminal prosecutions turn upon the subjective state-of-mind of the defendant. In such cases, the jury's perception of the credibility of the defendant (in this case a defense attorney who represented a criminal defendant), becomes the central aspect of the case. Tainted by her association with the client, counsel's zealous, but good faith, advocacy may appear to a jury as criminal wrongdoing. To be sure, in representing criminal defendants, counsel may decide to err on the side of caution by avoiding controversial defenses or procedures; or, in a more general sense, by muting the overall presentation of the defense. But does the Sixth Amendment contemplate this compromised effort from defense counsel? Amicus submits that defense counsel's fear of criminal exposure under open-ended charges for specific acts committed in his professional capacity exacts too high a toll on the adversarial system of justice.

Thus, amicus's proposed prophylactic rule struck a

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[10]In fact, the Seventh Circuit observed: "There is little case authority directly on point to consider whether an attorney acting in his professional capacity could be criminally liable under the omnibus clause of § 1503 for traditional litigation-related conduct that results in an obstruction of justice." App. 16.

necessary balance between the public's interest in punishing misconduct and the Sixth Amendment value in preserving good faith, zealous advocacy. Given the vast arsenal of traditional punitive measures at its disposal, the government's use of broad, infrequently-invoked charges to punish litigation-related misconduct creates "the likelihood of vindictiveness," justifying a presumption of an improper prosecution. *Goodwin*, 457 U.S. at 376. In short, the prosecution should be required to offer a persuasive explanation for the need to prosecute specific litigation-related conduct under broad and infrequently employed charges. *Cf. Wasman v. United States*, 468 U.S. 559, 569 (1984)("where the presumption applies, the sentencing authority or the prosecutor must rebut the presumption that an increased sentence or charge resulted from vindictiveness").

## CONCLUSION

For the foregoing reasons, NACDL urges this Court to grant the writ of certiorari to address the important issues presented.

Respectfully submitted,

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